

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/25/2009 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 15, 16, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Buck.

Jones discloses the claimed invention with exception of the buoyant beads. Provided are a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements **19** made of sheets of foam. A first closure element **23** can be used to set the proper size of the element, while a second zipper closure element can be released without altering the first.

Buck teaches the construction of a PFD from buoyant beads instead of sheets of foam.

It would have been obvious to one of ordinary skill in the art at the time of the invention to form the buoyant elements **19** of Jones from beads as taught by Buck.

Such a combination would have been desirable so as to provide for increased flexibility of the garment.

4. Claims 15-18,16,21-24,28,29 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kea in view of Buck.

Kea discloses the claimed invention with exception of buoyant beads. Provided are a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements **32**. A first closure element **17,18** can be used to set the proper size of the element, while a second closure element can be released without altering the first.

Buck is applied as above.

Re claims 17,18,28 and 29, Kea suggests the interchangeability of fastener types, but fails to specifically mention that the lateral straps as including VELCRO®.

It would have been obvious to the ordinary routineer working in the art at the time of the invention to substitute recognized equivalent fastener types. In this instance, substitution of VELCRO® tape as is old and well known in the art for the lateral strapping of Kea would have been an obvious choice of design.

While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art

would employ.”” *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

“When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”

Id., at 1740, 82 USPQ2d at 1396. We must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id.

Re claim 18, “towards the back” denotes no specific structure and/or arrangement so as to define over the lateral positioning as shown by Kea.

5. Claims 19-21,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Buck as applied against claims 15 and 16 above, and further in view of Samano.

Jones fails to show an adjustment for the arm opening/ shoulder area.

Samano teaches such adjustment straps **2**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide adjustability in the shoulders of Jones as taught by Samano.

Such a combination would have been desirable so as to provide for accommodating users of various sizes.

Re claim 20, VELCRO® is a recognized equivalent to the strap fasteners of Samano, and substitution of one for the other would have been well within the level of

skill of the ordinary routineer working in the art at the time of the invention, providing results as would be expected.

6. Applicant's arguments filed 9/25/2009 have been fully considered but they are not persuasive.

Applicant's comments and evidence re the makeup of VELCRO® are noted, but moot in view of the removal of the trademark from the claims.

Applicant argues that the cords **23** at the sides of the floatation device of Jones do not constitute a releasable closure.

The examiner does not agree. The sides will be "open" until "closed" by the threading of the lace through the spaced eyelets. The lacing can inherently be removed as desired. Furthermore, note figure 3 of Jones showing the opening between front and rear panels closed, due to a pulling of the ring, and figure 1 showing the release of the ring/lacing to allow an opening between front and rear panels.

Applicant argues that the garment of Kea, being a survival garment is not a swimming aid device. Apparently applicant's position is that one wearing the garment of Kea in an emergency is incapable of swimming.

The examiner does not agree with this reasoning, as it can reasonably be expected that one wearing the garment of Kea in such an emergency, would make effort to move to safety, and such would inherently involve swimming. The garment providing buoyancy to the wearer, thereby aiding in his/her swimming efforts.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-

6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ed Swinehart/
Primary Examiner
Art Unit 3617